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September 1, 2016

Ms. Rachel Dickon
Assistant Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Dickon:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondents' Conditional Response to Complainants' Unauthorized Reply on Motion to File Sur-Reply

If you have any questions, please do not hesitate to contact me.

Sincerely,

Eric C. Jeffrey

Enclosures

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV, ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV, ET AL

RESPONDENTS' CONDITIONAL RESPONSE TO COMPLAINANTS'
UNAUTHORIZED REPLY ON MOTION TO FILE SUR-REPLY

Pursuant to FMC Rules, 69, and 71, Respondents Empire Lines United and Michael Hitrinov hereby respond to Complainants' August 31, 2016 Reply to Respondents' Response to Complainants' Motion for Leave to File a Sur-reply.

As reflected in this and other recent filings, Complainants (in this case Mr. Katz¹) have now abandoned any pretense of trying to follow the FMC Rules. They have observed neither (i) the requirement to confer before making a non-dispositive motion and to show such conferral in the motion, nor (ii) the requirement to seek the permission of the Presiding Officer before filing an unauthorized pleading. Rather, as they erroneously accuse the undersigned, Complainants' Counsel simply arrogate to themselves the Presiding Officer's metaphorical robes, proclaiming that they, and they alone, shall decide whether and when to waive the FMC's Rules on their own

¹ Despite the protestations of Complainants' Counsel, their individual styles of bad writing are easily distinguishable.

behalf. The FMC Rules exist for good reasons, not to allow the parties to treat the proceedings as a free-for-all, but rather to define, inter alia, when, how, and how many, pleadings may be filed.

Because Complainants' self-authorized Reply was filed without leave of the actual Presiding Officer (or any request therefor or attempt to show extraordinary circumstances), it should be ignored, as then should the remainder of this Conditional Response. In the unlikely event, however, that the Presiding Officer nevertheless considers Complainants' filing, he should also consider this Conditional Response demonstrating that Complainants' pleading is without legal or factual merit. As previously shown, the FMC Rules on who has the last word provide the requisite extraordinary circumstances for such further filing. See, e.g., *Universal Fixture Manufacturing Co. v. ANERA*, 26 SRR 386, 387 (ALJ 1992); *Matson Navigation Co.—Hawaiian Cargoes*, 25 SRR 245, 246 (FMC 1989).

Stripped of irrelevant calumny and personal invective, there is little left of Mr. Katz's unauthorized reply. We respond briefly below to the few semi-substantive points Complainants do purport to assert. What is most noteworthy, however, is not what Complainants' say, but what they do not say.

1. Complainants' do not deny that both their initial motion and their instant reply are inconsistent with the FMC Rules. Nor do they apologize for or attempt to excuse their clear non-compliance. Quite to the contrary, they appear openly proud of the fact, like little children defying their parents. Complainants' Counsel seek to justify such non-compliance by arguing that two wrongs *do* make a right, relying for that legal proposition on a mis-quoted and mixed aphorism about barnyard animals.

It requires little discussion to demonstrate that Complainants' Counsel are wrong as a matter of both fact and law. While offering plenty of irrelevant bluster, Complainants' Counsel do not identify a single non-dispositive motion made by Respondents that does not detail the effort made to obtain consent, or that does not ask for any needed leave to reply based on extraordinary circumstances. More importantly, it simply cannot be argued that the FMC's adjudicatory process is so degenerated that one party's alleged failure to follow the rules, even if true, excuses the transgressions of another party.

2. Complainants make no effort to show why the Presiding Officer should exercise his discretion under the "extraordinary circumstances" standard to grant them leave to file a further reply. Instead, they merely quibble about various statements in Respondents' Response. Even on their own terms, Complainants have failed.

a. Complainants do not deny that their motion was filed an extraordinary long time after the pleading to which it relates (29 days). Nor do they offer any reason or excuse for their tardiness. Rather, they simply note that the Rules do not set forth an express "statute of limitations" for such motions. This is, of course a straw man argument. Respondents did not, and do not, argue that any FMC Rule (other than Rule 71(a)) precludes the motion. Respondents instead contend only that the Presiding Officer should consider the very belated nature of Complainants' motion in deciding how to exercise his discretion, as Complainants' long wait: (i) substantially belies Complainant's assertion that further briefing (sur-reply and response) is truly needed, and (ii) substantially increases the likelihood that the request is interposed for purposes of delay and misdirecting attention from Complainants' failure to make any proof of subject matter jurisdiction.

b. Complainants' Counsel acknowledge by their silence that they indeed misrepresented the whereabouts of Mr. Nussbaum in order to gain an advantage in the proceeding,² but claim the fact to be irrelevant. Although such dishonesty is always relevant under FMC Rule 26, in this case it merely confirms that Complainants have no reason or excuse for making their motion so late.

c. Complainants likewise fail to disclaim the fact that they have already had more than ample opportunity after the filing to which they seek to respond to address these issues, if they actually thought them to be as important as they now posture. This again cuts strongly against any exercise of discretion to permit still further briefing on an issue that is, at best, tangential to the question of subject matter jurisdiction.

d. Finally, as to Mr. Kapustin, apart from noting once again that the undersigned neither "offered" nor in any way authored any document Mr. Kapustin submitted here or anywhere else, and indeed has never met or communicated with Mr. Kapustin, I simply point out again that, until just recently, Mr. Nussbaum was telling persons that he was providing information to the FMC on behalf of Mr. Kapustin, and describing Mr. Kapustin here and elsewhere very differently from what he now claims. See, e.g., Kapustin App. 16.³

In sum, Complainants' unauthorized and repetitive reply is wholly unwarranted, as is the initial request for leave to sur-reply, which should be denied. We note that Mr. Nussbaum has

² They could hardly do otherwise, given that Mr. Nussbaum was physically present at a deposition in Brooklyn at a time when he told the Presiding Officer and other tribunals he would be thousands of miles away, as recorded by the transcript of the deposition and the memories of others who attended.

³ Complainants' bootstrapped claim that Mr. Kapustin will soon be subject to a bench warrant requires little response, if any. That Mr. Nussbaum has, through his associate Ms. Tempkin, importuned the DNJ to issue such a warrant is no evidence that the court will accede to that request. It appears that Complainants think Ms. Tempkin is like the Mikado, whose every utterance is deemed to be done.

recently been admonished in federal district court for similar gamesmanship in the nature of repeated submission of unwarranted filings, as evidenced by the following Minute Order in a proceeding where Mr. Nussbaum represents the Defendants (emphasis added).⁴

From: <ecf_bounces@nyed.uscourts.gov>

Date: Aug 30, 2016 7:22 PM

Subject: Activity in Case 1:15-cv-00557-DLI-RER Empire United Lines Co., Inc. v. Presniakovas et al Order on Motion for Sanctions

To: <nobody@nyed.uscourts.gov>

Cc:

Notice of Electronic Filing

The following transaction was entered on 8/30/2016 at 7:22 PM EDT and filed on 8/30/2016

Case Name: Empire United Lines Co., Inc. v. Presniakovas et al

Case Number: 1:15-cv-00557-DLI-RER

Filer:

Document Number: No document attached

Docket Text:

ORDER denying [26] Motion for Sanctions; denying [23] Motion for Sanctions -- Plaintiff filed a motion to dismiss defendants' affirmative defenses and counterclaims in lieu of an answer. Defendants erroneously simply served their opposition to the motion but did not file it on the docket as required. Defendants thought (incorrectly) that the bundle rule applied per my rules. Plaintiff did not docket the motion until defendants filed a motion for sanctions for not filing their opposition on the docket. Upon receiving the defendants' sanction motion, plaintiff filed the opposition with a letter of apology. No sanctions are warranted against plaintiff because it was *defendants* not plaintiff that erred. Plaintiff did nothing wrong, and yet tried to correct what had been perceived as an error in its part. Moreover, what was filed as a motion (DE #23) should have been filed as a letter for leave to file a motion for sanctions, which also was improperly directed to the magistrate judge instead of to the undersigned district judge. Moreover, Rule 11 requires that the party seeking sanctions give the aggrieved party an opportunity to cure. It seems defendants did not do that. If anyone should be sanctioned here it should be defendants. Defendants' second "motion" for

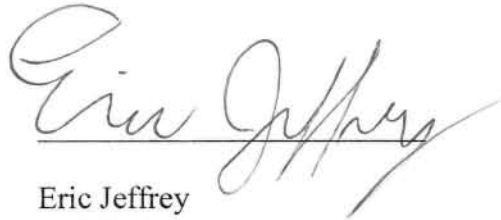
⁴ A copy of the Docket Sheet also identifying Mr. Nussbaum as counsel for Defendants is attached as Appendix 1.

sanctions, is simply a continuation of the first complaint and an accusation that this entire cause of action is frivolous. The motion is denied. What is frivolous is defendants' motion for sanctions. The plaintiff offered to dismiss the complaint without prejudice. Defendants have refused to allow plaintiff to do so, instead making counterclaims. As such the Court will determine which claims have merit. The motions to dismiss are *sub judice* and will be decided in due course. In the meantime, defendants are advised that they may find themselves facing sanctions if they continue to make frivolous and vexatious motions for sanctions. SO ORDERED by Chief Judge Dora Lizette Irizarry on 8/30/2016. (Irizarry, Dora)

CONCLUSION

For the foregoing reasons, the Presiding Officer should ignore Complainants' unauthorized reply and deny their request for leave to file a sur-reply.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Eric Jeffrey", written over a horizontal line.

Eric Jeffrey
Anjali Vohra
Nixon Peabody LLP
799 9th Street, N.W., Suite 500
Washington, D.C. 20001
(202) 585-8000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Respondents' Conditional Response to Complainants' Unauthorized Reply on Motion to File Sur-Reply by email and first class mail to the following:

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Dated at Washington, DC, this 1st day of September, 2016.



Eric Jeffrey
Counsel for Respondents

Appendix 1

ACO

**U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:15-cv-00557-DLI-RER**

Empire United Lines Co., Inc. v. Presniakovas et al
Assigned to: Chief Judge Dora Lizette Irizarry
Referred to: Magistrate Judge Ramon E. Reyes, Jr
Demand: \$350,000
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 02/04/2015
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Empire United Lines Co., Inc.

represented by **Jon Werner**
Lyons & Flood LLP
65 West 36th Street
7th Floor
New York, NY 10018
212-594-2400
Fax: 212-594-4589
Email: jwerner@lyons-flood.com
ATTORNEY TO BE NOTICED

V.

Defendant

Andrejus Presniakovas

represented by **Marcus A. Nussbaum**
POB 245599
Brooklyn, NY 11224
888-426-4370
Fax: 347-572-0439
Email: marcus.nussbaum@gmail.com
ATTORNEY TO BE NOTICED

Defendant

Baltic Auto Shipping, Inc.

represented by **Marcus A. Nussbaum**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Baltic Auto Shipping, Inc.

represented by **Marcus A. Nussbaum**
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

Andrejus Presniakovasrepresented by **Marcus A. Nussbaum**

(See above for address)

ATTORNEY TO BE NOTICED

V.

Counter Defendant**Empire United Lines Co., Inc.**represented by **Jon Werner**

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/04/2015	<u>1</u>	COMPLAINT against Baltic Auto Shipping, Inc., Andrejus Presniakovas filing fee \$ 400, receipt number 0207-7502686 Was the Disclosure Statement on Civil Cover Sheet completed -YES., filed by Empire United Lines Co., Inc.. (Attachments: # <u>1</u> Exhibit A - Loan Agreement, # <u>2</u> Exhibit B - Wire transfer confirmation, # <u>3</u> Proposed Summons, # <u>4</u> Proposed Summons, # <u>5</u> Civil Cover Sheet) (Werner, Jon) (Entered: 02/04/2015)
02/04/2015	<u>2</u>	Corporate Disclosure Statement by Empire United Lines Co., Inc. (Werner, Jon) (Entered: 02/04/2015)
02/04/2015		Case assigned to Judge Dora Lizette Irizarry and Magistrate Judge Ramon E. Reyes, Jr. (Bowens, Priscilla) (Entered: 02/05/2015)
02/04/2015	<u>3</u>	Summons Issued as to All Defendants. (Attachments: # <u>1</u> Baltic summons) (Bowens, Priscilla) (Entered: 02/05/2015)
02/05/2015	<u>4</u>	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that <i>if</i> all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically only if all parties wish to consent . The form may also be accessed at the following link: http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf . You may withhold your consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent. (Bowens, Priscilla) (Entered: 02/05/2015)
02/05/2015	<u>5</u>	This attorney case opening filing has been checked for quality control. See the attachment for corrections that were made, if any. (Bowens, Priscilla) (Entered: 02/05/2015)
02/19/2015	<u>6</u>	SUMMONS Returned Executed by Empire United Lines Co., Inc.. Baltic Auto Shipping, Inc. served on 2/6/2015, answer due 2/27/2015. (Werner, Jon) (Entered: 02/19/2015)
02/19/2015	<u>7</u>	SUMMONS Returned Executed by Empire United Lines Co., Inc.. Andrejus Presniakovas served on 2/6/2015, answer due 2/27/2015. (Werner, Jon) (Entered: 02/19/2015)

		02/19/2015)
02/27/2015	<u>8</u>	ANSWER to <u>1</u> Complaint, , COUNTERCLAIM against Empire United Lines Co., Inc. by Baltic Auto Shipping, Inc., Andrejus Presniakovas. (Nussbaum, Marcus) (Entered: 02/27/2015)
03/11/2015	<u>9</u>	SCHEDULING ORDER: Initial Conference set for 3/25/2015 at 10:00 AM in Courtroom 2E North before Magistrate Judge Ramon E. Reyes, Jr., located in the United States Eastern District of New York Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201. All counsel are required to attend, and plaintiff's counsel is directed to ensure that all counsel are aware of their obligation to appear. Any requests for adjournment must be made in writing on notice to opposing parties, and must disclose whether all parties consent. No request for adjournment will be considered unless made at least forty-eight (48) hours before the scheduled conference. Prior to the conference, the parties are to comply with the requirements of Rule 26(f) of the Fed. R. Civ. P. The attached Case Management Plan must be completed and filed on ECF no later than 3/23/15. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 3/11/2015. (Vertus, Miriam) (Entered: 03/11/2015)
03/19/2015	<u>10</u>	Motion to Dismiss for Failure to State a Claim , MOTION to Strike <u>8</u> Answer to Complaint, Counterclaim (Responses due by 4/2/2015), MOTION for More Definite Statement (Responses due by 4/2/2015) by Empire United Lines Co., Inc.. (Werner, Jon) (Entered: 03/19/2015)
03/19/2015	<u>11</u>	AFFIDAVIT/DECLARATION in Support re <u>10</u> Motion to Dismiss for Failure to State a Claim MOTION to Strike <u>8</u> Answer to Complaint, Counterclaim MOTION for More Definite Statement filed by Empire United Lines Co., Inc.. (Attachments: # <u>1</u> Exhibit 1 - Complaint, # <u>2</u> Exhibit 2 - Emails between counsel, # <u>3</u> Exhibit 3 - Answer and Counterclaim) (Werner, Jon) (Entered: 03/19/2015)
03/19/2015	<u>12</u>	MEMORANDUM in Support re <u>10</u> Motion to Dismiss for Failure to State a Claim MOTION to Strike <u>8</u> Answer to Complaint, Counterclaim MOTION for More Definite Statement filed by Empire United Lines Co., Inc.. (Werner, Jon) (Entered: 03/19/2015)
03/23/2015	<u>13</u>	Proposed Scheduling Order by Empire United Lines Co., Inc. (Werner, Jon) (Entered: 03/23/2015)
03/24/2015	<u>14</u>	CASE MANAGEMENT STATEMENT by defendants <i>ANDREJUS PRESNIAKOVAS and BALTIC AUTO SHIPPING, INC.</i> (Nussbaum, Marcus) (Entered: 03/24/2015)
03/25/2015		ORDER: Attorney for Defendants, Marcus A. Nussbaum, is directed to file a formal notice of appearance via ECF no later than March 30, 2015. So Ordered by Judge Dora Lizette Irizarry on 3/25/2015. (Carosella, Christy) (Entered: 03/25/2015)
03/25/2015		Minute Entry for proceedings held before Magistrate Judge Ramon E. Reyes, Jr:Initial Conference Hearing held on 3/25/2015. Appearances stated on the record. Discussions held. Case Management Plan entered. (Tape #10:21:22-10:48:36.) (Vertus, Miriam) (Entered: 03/25/2015)
03/25/2015	<u>15</u>	NOTICE of Appearance by Marcus A. Nussbaum on behalf of Baltic Auto Shipping, Inc., Andrejus Presniakovas (notification declined or already on case) (Nussbaum,

		Marcus) (Entered: 03/25/2015)
03/25/2015	<u>16</u>	SCHEDULING ORDER: All discovery to be completed on or before 9/25/15. Pre-motion letters due 10/2/15; opposition due 10/9/15. Final Pretrial Conference set for 10/13/2015 at 10:00 AM before Magistrate Judge Ramon E. Reyes, Jr., Status Conference set for 8/5/2015 at 10:00 AM in Courtroom 2E North before Magistrate Judge Ramon E. Reyes, Jr. Plaintiff's counsel will initiate the Telephone Conference set for 5/22/2015 at 10:00 AM before Magistrate Judge Ramon E. Reyes, Jr. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 3/25/2015. (Vertus, Miriam) (Entered: 03/25/2015)
05/18/2015	<u>17</u>	MOTION to Dismiss <i>plaintiff's action pursuant to Rule 41(a)(2)</i> by Empire United Lines Co., Inc.. (Werner, Jon) (Entered: 05/18/2015)
05/18/2015	<u>18</u>	AFFIDAVIT/DECLARATION in Support re <u>17</u> MOTION to Dismiss <i>plaintiff's action pursuant to Rule 41(a)(2)</i> filed by Empire United Lines Co., Inc.. (Attachments: # <u>1</u> Exhibit 1 - Complaint, # <u>2</u> Exhibit 2 - Answer) (Werner, Jon) (Entered: 05/18/2015)
05/22/2015		Minute Entry for proceedings held before Magistrate Judge Ramon E. Reyes, Jr.: Jon Werner and Marcus A. Nussbaum appearing. Discussions held. Status Report due 5/29/2015. Defendants'/Counter Claimants' opposition to <u>17</u> , if any, due 6/5/2015. Court recommends that parties reach agreement to dismiss all claims and counter claims without further litigation. (Tape #10:00:12-10:17-57 (208N).) (Yasunaga, Adrienne) (Entered: 05/22/2015)
05/22/2015		Minute Entry for proceedings held before Magistrate Judge Ramon E. Reyes, Jr.: Telephone Conference held on 5/22/2015. See above Minute Entry entered 5/22/2015. (Yasunaga, Adrienne) (Entered: 05/22/2015)
05/29/2015	<u>19</u>	Letter <i>regarding status of dismissal</i> by Empire United Lines Co., Inc. (Attachments: # <u>1</u> Exhibit - Correspondence between counsel) (Werner, Jon) Added Event Type: MOTION for Extension of Time to File Response/Reply on 6/1/2015 (Vertus, Miriam). (Entered: 05/29/2015)
06/01/2015		ORDER granting <u>19</u> Motion for Extension of Time to File Response/Reply by 6/15/2015 re <u>17</u> MOTION to Dismiss <i>plaintiff's action pursuant to Rule 41(a)(2)</i> . Ordered by Magistrate Judge Ramon E. Reyes, Jr on 6/1/2015. (Vertus, Miriam) (Entered: 06/01/2015)
06/15/2015	<u>20</u>	RESPONSE to Motion re <u>17</u> MOTION to Dismiss <i>plaintiff's action pursuant to Rule 41(a)(2) and Cross Motion for Attorneys' Fees</i> filed by Baltic Auto Shipping, Inc., Andrejus Presniakovas. (Attachments: # <u>1</u> Affirmation) (Nussbaum, Marcus) (Entered: 06/15/2015)
09/25/2015	<u>21</u>	MOTION for Extension of Time to Complete Discovery by Baltic Auto Shipping, Inc., Andrejus Presniakovas. (Nussbaum, Marcus). Added MOTION for Hearing on 9/25/2015 (Vertus, Miriam). (Entered: 09/25/2015)
09/27/2015	<u>22</u>	RESPONSE in Opposition re <u>21</u> MOTION for Extension of Time to Complete Discovery MOTION for Hearing filed by Empire United Lines Co., Inc.. (Werner, Jon) (Entered: 09/27/2015)

09/28/2015		ORDER denying <u>21</u> Motion for Extension of Time to Complete Discovery; denying <u>21</u> Motion for Hearing. Motions denied without prejudice to renewal should the pending motion to dismiss defendants' counter claim be resolved in defendants' favor. Ordered by Magistrate Judge Ramon E. Reyes, Jr on 9/28/2015. (Reyes, Ramon) (Entered: 09/28/2015)
09/29/2015	<u>23</u>	MOTION for Sanctions <i>and Motion that the Court Reject Plaintiff's Motion to Strike Defendants' Counterclaim due to plaintiff's fatal procedural defect</i> by Baltic Auto Shipping, Inc., Andrejus Presniakovas. (Nussbaum, Marcus) (Entered: 09/29/2015)
09/30/2015	<u>24</u>	AFFIDAVIT/DECLARATION in Opposition re <u>10</u> Motion to Dismiss for Failure to State a Claim MOTION to Strike <u>8</u> Answer to Complaint, Counterclaim MOTION for More Definite Statement filed by Empire United Lines Co., Inc.. (Werner, Jon) (Entered: 09/30/2015)
09/30/2015	<u>25</u>	MEMORANDUM in Opposition re <u>10</u> Motion to Dismiss for Failure to State a Claim MOTION to Strike <u>8</u> Answer to Complaint, Counterclaim MOTION for More Definite Statement filed by Empire United Lines Co., Inc.. (Werner, Jon) (Entered: 09/30/2015)
10/02/2015	<u>26</u>	Second MOTION for Sanctions <i>and Motion that the Court Reject Plaintiff's Motion to Strike Defendants' Counterclaim due to plaintiff's fatal procedural defect</i> by Baltic Auto Shipping, Inc., Andrejus Presniakovas. (Nussbaum, Marcus) (Entered: 10/02/2015)
11/23/2015	<u>27</u>	MOTION for Discovery <i>Conference</i> by Baltic Auto Shipping, Inc., Andrejus Presniakovas. (Nussbaum, Marcus) (Entered: 11/23/2015)
11/24/2015	<u>28</u>	RESPONSE in Opposition re <u>27</u> MOTION for Discovery <i>Conference</i> filed by Empire United Lines Co., Inc.. (Werner, Jon) (Entered: 11/24/2015)
12/01/2015		ORDER denying <u>27</u> Motion for Discovery. Further proceedings will be scheduled, if necessary, after decision on the pending motions. Ordered by Magistrate Judge Ramon E. Reyes, Jr. on 12/1/2015. (Yasunaga, Adrienne) (Entered: 12/01/2015)
08/30/2016		ORDER denying <u>26</u> Motion for Sanctions; denying <u>23</u> Motion for Sanctions -- Plaintiff filed a motion to dismiss defendants' affirmative defenses and counterclaims in lieu of an answer. Defendants erroneously simply served their opposition to the motion but did not file it on the docket as required. Defendants thought (incorrectly) that the bundle rule applied per my rules. Plaintiff did not docket the motion until defendants filed a motion for sanctions for not filing their opposition on the docket. Upon receiving the defendants' sanction motion, plaintiff filed the opposition with a letter of apology. No sanctions are warranted against plaintiff because it was <i>defendants</i> not plaintiff that erred. Plaintiff did nothing wrong, and yet tried to correct what had been perceived as an error in its part. Moreover, what was filed as a motion (DE #23) should have been filed as a letter for leave to file a motion for sanctions, which also was improperly directed to the magistrate judge instead of to the undersigned district judge. Moreover, Rule 11 requires that the party seeking sanctions give the aggrieved party an opportunity to cure. It seems defendants did not do that. If anyone should be sanctioned here it should be defendants. Defendants' second "motion" for sanctions, is simply a continuation of the first complaint and an accusation that this entire cause of action is frivolous. The motion is denied. What is frivolous is defendants' motion for sanctions.

The plaintiff offered to dismiss the complaint without prejudice. Defendants have refused to allow plaintiff to do so, instead making counterclaims. As such the Court will determine which claims have merit. The motions to dismiss are *sub judice* and will be decided in due course. In the meantime, defendants are advised that they may find themselves facing sanctions if they continue to make frivolous and vexatious motions for sanctions. SO ORDERED by Chief Judge Dora Lizette Irizarry on 8/30/2016. (Irizarry, Dora) (Entered: 08/30/2016)

PACER Service Center			
Transaction Receipt			
09/01/2016 10:32:06			
PACER Login:	sp0122:2638071:0	Client Code:	2697005
Description:	Docket Report	Search Criteria:	1:15-cv-00557-DLI-RER
Billable Pages:	5	Cost:	0.50